12-31

SPD 16-2008

Secretary of State
Certificate and Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on [upon filing] by the
Date prior to or same as filing date

Department of Human Services, Seniors and People with Disabilities Division 411
Agency and Division Administrative Rules Chapter Number

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to become effective [January 1, 2009]. Rulemaking Notice was published in the [December 2008] Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Rescinding the Licensing Moratorium for Residential Care and Assisted Living Facilities

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)
Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:
411-054-0005, 411-054-0012, 411-054-0105

REPEAL:
411-054-0008

RENUMBER:

AMEND & RENUMBER:

FILED
DEC 31 2008
ARCHIVES DIVISION
SECRETARY OF STATE

Stat. Auth.: ORS 410.070 & 443.450

Other Auth.: House Bill 3626 (2008 Special Session)

Stats. Implemented: ORS 443.400 through 443.455 & 443.991

RULE SUMMARY

To comply with House Bill 3626 (2008 Special Session), the Department of Human Services, Seniors and People with Disabilities Division is permanently amending OAR 411-054-0005 and OAR 411-054-0012 and repealing OAR 411-054-0008 to rescind the licensing moratorium for residential care and assisted living facilities.

SPD is also permanently amending OAR 411-054-0105 to correct a grammatical error.

Catherine A Cooper	12/31/08	Catherine A. Cooper
Signature	Date	Printed Name

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005

DEPARTMENT OF HUMAN SERVICES
SENIORS AND PEOPLE WITH DISABILITIES DIVISION
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 54

RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES

411-054-0005
Definitions
For the purpose of these rules, the following definitions apply:
(1) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department of Human Services designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department of Human Services to perform specific activities in relation to residential care and assisted living facilities including: conducting inspections and investigations regarding protective service, abuse, and neglect; monitoring; and making recommendations to the Seniors and People with Disabilities Division regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.
(2) "Abuse" means:
(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent person would be able to prevent, such as those resulting from hitting, pinching, striking, rough handling, or corporal punishment. These instances of abuse are presumed to cause physical injury, including pain, to all residents, including those in a coma or those who are otherwise incapable of expressing injury or pain.
(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity. Abuse under this definition includes abandonment.
(c) Sexual contact with a resident, including fondling, by an employee or agent of a facility by: physical force; physical or verbal threat of harm or deprivation to the resident or others; use of position, authority, or misinformation to compel a resident to do what the resident would not otherwise do; or where the resident has no reasonable ability to consent. For the purpose of this rule, consent means a voluntary agreement or concurrence of wills. Mere failure of the resident to object does not, in and of itself, constitute an expression of consent.
(d) Theft or diversion of a resident's property, including money, personal property, and medications; illegal or improper use of a resident's resources for the personal benefit, profit, or gain of another person; borrowing resident funds; spending resident funds without the resident's consent; if the resident is not capable of consenting, spending resident funds for items or services that the resident cannot benefit from or appreciate; or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.
(e) Verbal or mental abuse that includes, in extreme forms: the use of oral, written, or gestured communication that willfully includes disparaging and derogatory terms to the resident, or within

their hearing distance, regardless of their age, ability to comprehend, or disability; humiliation; intimidation; harassment; threats of punishment or deprivation directed toward the resident; and unwanted or inappropriate crude or sexual language, questions, comments, or other communication. Examples of verbal and mental abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that the resident may never be able to see the resident's family again; and making unwanted sexual comments. Verbal and mental abuse is distinguished from resident rights violations by the extreme or offensive nature of the communication.
(f) Involuntary seclusion for convenience or discipline. Involuntary seclusion is defined as the separation of a resident from other residents or from their room or confinement to their room (with or without roommates) against the resident's will or the will of the resident's legal representative. Emergency or short-term, monitored separation from other residents may not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention until professional staff develop a plan of care to meet the resident's needs, or as part of an inter-disciplinary care plan after other interventions have been attempted.
(3) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for continued well being, health, and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.
(4) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility.
(5) "Assisted Living Facility" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult persons with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.
(6) "Applicant" means the person, persons, or entity, required to complete a facility application for license. Applicant includes a sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that owns the residential care or assisted living facility business. Applicant also includes the sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that operates the assisted living or residential care facility on behalf of the facility business owner.
(7) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents. The employee may be either a direct care staff or universal worker as defined in this rule.
(8) "Change of Condition – Short Term" means a change in the resident's health or functioning that is expected to resolve or be reversed with minimal intervention or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.
(9) "Change of Condition - Significant" means a major deviation from the most recent evaluation that may affect multiple areas of functioning or health that is not expected to be short term and imposes significant risk to the resident. Examples of significant change of condition include but are not limited to: broken bones; stroke, heart attack, or other acute illness or condition onset; unmanaged high blood sugar levels; uncontrolled pain; fast decline in activities of daily living;

significant unplanned weight loss; pattern of refusing to eat; level of consciousness change; and pressure ulcers (stage 2 or greater).
(10) "Choice" means a resident has viable options that enable the resident to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.
(11) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.
(12) "DHS" means the Department of Human Services.
(13) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Creating an environment that allows personal assistance to be provided in privacy supports dignity, as does delivering services in a manner that shows courtesy and respect.
(14) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include: medication administration; resident-focused activities; assistance with activities of daily living; supervision and support of residents; and serving meals, but not meal preparation.
(15) "Directly Supervised" means that a qualified staff member maintains visual contact with the supervised person.
(16) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.
(17) "Entity" means an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit, including associations, joint stock companies, and insurance companies, a state, or a political subdivision, or instrumentality including a municipal corporation.
(18) "Exception" means a written variance granted by the Seniors and People with Disabilities Division from a regulation or provision of these rules.
(19) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility.
(20) "FPS" means the Facilities Planning and Safety Program within the Department of Human Services, Public Health Division.
(21) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.
(22) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.
(23) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.
(24) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.
(25) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.
(26) "Licensed Nurse" means an Oregon licensed practical or registered nurse.
(27) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

(28) "Managed Risk" means a process by which a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.
(29) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.
(30) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (e.g., heart disease or diabetes). Modified special diets include, but are not limited to: small frequent meals; no added salt; reduced or no added sugar; and simple textural modifications. Medically complex diets are not included.
(31) "New Construction" means a new building; an existing building or part of a building that is not currently licensed; a major alteration to an existing building; or additions, conversions, renovations, or remodeling of existing buildings.
(32) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851, division 047.
(33) "Owner" means a person with an ownership interest.
(34) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.
(35) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.
(36) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.
(37) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.
(38) "Psychoactive Medications" means medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive medications include antidepressants, antipsychotics, sedatives, hypnotics, and antianxiety medications.
(39) "Resident" means any person who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.
(40) "Residential Care Facility" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding where six or more seniors and adult persons with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.
(41) "Restraint" means any physical device that the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.
(42) "Retaliation" means to threaten or intimidate, or take an action that is detrimental to a person (e.g., harassment, abuse, coercion, etc.)
(43) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(44) "Service Plan" means a written, individualized plan for services developed by a service planning team and the resident, or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.
(45) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036 that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident.
(46) "Services" means supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.
(47) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.
(48) "These Rules" means the rules in OAR chapter 411, division 054.
(49) "Underserved" means services are significantly unavailable within the service area in a comparable setting for the general public, a specific population, including, residents with dementia, traumatic brain injury, or recipients of Medicaid.
(50) "Unit" means an individual living space constructed as a completely private apartment, including living and sleeping space, kitchen area, bathroom, and adequate storage areas.
(51) "Universal Worker" means a facility employee whose assignments include other tasks (e.g., housekeeping, laundry, food service, etc.) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.
Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 to 443.455 & 443.991

411-054-0012
Requirements for New Construction or Initial Licensure
(1) An applicant requesting approval of a potential license for new construction or licensing of an existing building that is not operating as a licensed residential care or assisted living facility, must request a meeting with SPD before submitting a letter of intent as described in section (3) of this rule.
(2) Prior to beginning new construction of a building, or purchase of an existing building with intent to request a license, the applicant must meet the following criteria to receive approval from SPD for a potential license:
(a) Applicants must demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances, and permit requirements in Oregon, and the ability to deliver quality services to citizens of Oregon; and
(b) The applicant, including applicants for change of ownership of existing licensed facilities, must provide a letter of intent as set forth in section (3) of this rule, and demonstrate a willingness to provide care and services for an underserved population.
(3) LETTER OF INTENT. Prior to application for a building permit, a prospective applicant, with intent to build or operate a facility, must submit to SPD a letter of intent that includes the following:
(a) Identification of potential applicant;
(b) Identification of the city and street address of the intended facility;

(c) Intended facility type (e.g., residential care, assisted living, Alzheimer's Endorsed), the intended number of units, and maximum resident capacity;
(d) Description of the underserved population the applicant is requesting to service;
(e) Identification of operations within Oregon or within other states that provide a history of the applicant's ability to serve the intended population; and
(f) An independent market analysis completed by a third party professional that meets the requirements of section (4) of this rule.
(4) MARKET ANALYSIS. The applicant must submit a current market analysis to SPD for review and consideration prior to application for a building permit. A market analysis is not required for change of owner applicants of existing licensed buildings. The market analysis must show the need for the services offered by the license applicant and must include:
(a) Description of the intended population to be served, including special needs population as applicable;
(b) A current demographic overview of the area to be served;
(c) A description of the area and regional economy and the effect on the market for the project;
(d) Identification of the number of persons in the area to be served who are potential residents;
(e) Description of available amenities (e.g., transportation, hospital, shopping center, traffic conditions, etc.);
(f) Description of the extent, types, and availability of existing and proposed residential care and assisted living facilities located in the area to be served, as defined in ORS 443.400 to 443.455; and
(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.
(5) SPD shall issue a written decision of a potential license within 60 days of receiving all required information from the applicant.
(a) If the applicant is dissatisfied with the decision of SPD, the applicant may request a contested case hearing in writing within 14 calendar days from the date of the decision.
(b) The contested case hearing shall be in accordance with ORS chapter 183.
(6) SPD shall consider the applicant's stated intentions and compliance with the requirements of this rule and all structural and other licensing requirements as stated in these rules prior to issuing a license.
(7) BUILDING PLANS. After the letter of intent has been submitted to SPD, one set of building plans and specifications must be submitted to FPS and must comply with OAR chapter 333, division 675.
(a) Building plans must be submitted to FPS:
(A) Prior to beginning construction of any new building;
(B) Prior to beginning construction of any addition to an existing building;
(C) Prior to beginning any remodeling, modification, or conversion of an existing building that requires a building permit; or
(D) Subsequent to application for an initial license of a facility not previously licensed under this rule.
(b) Plans must comply with the Oregon Structural Specialty Code and Oregon Fire Code as required for the occupancy classification and construction type.
(c) Plans must be drawn to a scale of one-fourth inch or one-eighth inch to the foot, and must specify the date when construction, modification, or conversion is expected to be completed.

(d) Construction containing 4,000 square feet or more must be prepared by, and bear the stamp of, an Oregon licensed architect or engineer.
(8) SIXTY-DAYS PRIOR. At least 60 days prior to anticipated licensure the applicant must submit to SPD:
(a) A completed application form with the required fee;
(b) A copy of the facility's written rental agreements;
(c) Disclosure information; and
(d) Facility policies and procedures, ensuring that the facility's administrative, personnel, and resident care operations are conducted in compliance with these rules.
(9) THIRTY-DAYS PRIOR. Thirty days prior to anticipated licensure the applicant must submit:
(a) To SPD, a completed and signed Administrator Reference Sheet that reflects the qualifications and training of the individual designated as facility administrator and a criminal history request; and
(b) To FPS, a completed and signed Project Substantial Completion Notice that attests substantial completion of the building project and requests that an onsite licensing inspection be scheduled.
(10) TWO-DAYS PRIOR. At least two working days prior to the scheduled onsite licensing inspection of the facility the applicant must submit to SPD and FPS, a completed and signed Project Completion/Inspection Checklist that confirms that the building project is complete and fully in compliance with these rules.
(a) The scheduled, onsite licensing inspection may not be conducted until the Project Completion/Inspection Checklist has been received by both FPS and SPD.
(b) The onsite licensing inspection may be rescheduled at SPD's convenience if the scheduled, onsite licensing inspection reveals that the building is not in compliance with these rules as attested to on the Project Completion/Inspection Checklist.
(11) CERTIFICATE OF OCCUPANCY. The applicant must submit to SPD and FPS, a copy of the Certificate of Occupancy issued by the Building Codes Agency having jurisdiction that indicates the intended occupancy classification and construction type.
(12) CONFIRMATION OF LICENSURE. The applicant, prior to admitting any resident into the facility, must receive a written confirmation of licensure issued by SPD.
Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 to 443.455 & 443.991

411-054-0105
Inspections and Investigations
(1) The facility must cooperate with SPD personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.
(a) Records must be made available to SPD upon request. SPD personnel must have access to all resident and facility records and may conduct private interviews with residents. Failure to comply with this requirement shall result in regulatory action.
(b) The State Long Term Care Ombudsman must have access to all resident and facility records that relate to an investigation. Certified Ombudsman volunteers may have access to facility records that relate to an investigation and access to resident records with written permission from the resident or guardian.
(c) The State Fire Marshal or authorized representative must be permitted access to the facility and records pertinent to resident evacuation and fire safety.

(2) Staff of SPD shall visit and inspect every facility at least, but not limited to, once every two years to determine whether it is maintained and operated in accordance with these rules.
(a) Facilities not in compliance with these rules must submit a plan of correction that satisfies SPD, within ten days of receipt of the inspection report.
(b) In addition, SPD may impose sanctions for failure to comply with these rules.
(3) SPD staff may consult with and advise the facility administrator concerning methods of care, records, housing, equipment, and other areas of operation.
(4) A copy of the most current inspection report and any conditions placed upon the license must be posted with the facility's license in public view near the main entrance to the facility.
Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 to 443.455 & 443.991